

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

CrI.Rev.Pet.No. 559 of 1999()

SC.78/1994 of SESSIONS COURT, KOTTAYAM
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REVN. PETITIONER:

SUSHAMA GEORGE,
W/O.LATE GEORGE @ VARKICHAN,
KARUCHIRA VEEDU, VAKATHANAM,
KOTTAYAM.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS:

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1. PRADEESH, S/O.CHACKO,
KARUCHIRA VEEDU, BANK PADI BHAGOM,
VAKATHANAM KARA AND VILLAGE, KOTTAYAM.
 2. STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.RAJEEV
PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

CRL.R.P.NO.559 OF 1999

Dated this the 24th day of October, 2007

O R D E R

Koshy, J.

This revision petition is filed by PW2 against the acquittal of the accused in SC.No.78 of 1994. First respondent in the revision application was charged for offences punishable under Sections 302 and 324 of the Indian Penal Code. The allegation of the prosecution was that the deceased along with his father and wife were residing in Karuchira Veedu. There is an approach road running east-west from the Kannachira-Vakathanam road leading to the house of the deceased. The prosecution case as summerised by the trial Judge is as follows:

“The accused is the son of the deceased George @ Varkichan. The deceased along with his father and wife was residing in Karuchira Veedu in Vakathanam Village. There is an approach road running east-west from the Kannachira-Vakathanam road leading to the house of the deceased. The house of the accused is located on the south and there is a pathway from the approach road leading to his house. The accused and the deceased's father were moving on inimical terms prior to the occurrence since the father of the deceased did not permit vehicular traffic along with pathway leading to the house of the accused. On the date of occurrence

ie., on 7.12.1993 at about 1 p.m while the accused was tilling the pathway the deceased's father came here and offered resistance. There ensued an altercation between them and in the course of the altercation the accused threatened the deceased's father by showing a knife. Seeing this the deceased rushed to the scene and pushed the accused back towards his house. The accused ran towards his house and returned with an iron rod and beat the deceased on his hand. When the deceased tried to ward off the attack the iron rod hit the head of the accused causing injuries. Then the accused caught hold of the deceased and the deceased fell down. When PW2 the wife of the deceased, tried to lift him up the accused beat her with the iron rod. Thereafter the accused took out a knife from his waist and stabbed the deceased several times. The deceased was taken to the Mandiram Hospital from where he was referred to the Medical College Hospital, Kottayam. While undergoing treatment in the hospital the deceased succumbed to the injuries at 8 p.m."

2. PW1 filed first information report. PW1, brother of the deceased, who came later and who has not seen the incident, gave first information statement. In 313 statement the accused pleaded innocence and his case as per the statement filed at the end of 313 examination is as follows: The deceased and his father were not in favour of taking vehicles to his house. On account of this they were moving on inimical terms with him. On the date of the occurrence while he was filling up the pits in the pathway leading to his house the deceased and his father came there and offered resistance. The

deceased assaulted him and when he tried to run away from the scene of occurrence the deceased took an iron rod from the cattle shed and beat him on his head. On hearing the commotion his mother and father came to the scene. At that time the deceased's father beat his mother with a spade. Then he ran towards his eastern property but the deceased followed him and again attempted to assault him with the iron rod. Sensing danger to his life he brandished his knife. The deceased tried to catch hold of him and at that time blood was seen oozing from the body of the deceased. Seeing this he ran into his house. The only eye witness, who was not declared hostile is PW2. PW2 is the wife of the deceased. According to her, on the date of occurrence at 12.30 pm after lunch her father-in-law was resting on an easy chair in the sit out of their house and while she was washing the vessels in the kitchen she heard somebody talking loudly in an angry tune to her father-in-law. When she came out she saw her father-in-law standing in the courtyard and the accused with a spade standing in the footpath leading to his house. When her father-in-law asked the accused why he was digging the pathway the accused questioned his authority and then the accused took a knife from his waist and pointed it at him. At that time the deceased rushed to the scene and

pushed back the accused towards his house. Immediately she went inside the house and gave a telephone message to PW1's house regarding the altercation. When she returned the accused and the deceased were standing near the cattle shed. At that time the father and mother of the accused also came running to the scene. Then her father-in-law asked the accused's father to take the accused away from the scene. The accused's mother caught hold of her father-in-law and then she fell down. At that time the accused took an iron rod from the foot of a guava tree and rushed towards her father-in-law. When her husband interfered the accused beat him. Her husband tried to ward off the attack when the iron rod hit the head of the accused. The accused fell down. Thereafter the accused caught hold of her husband and he also fell down. She tried to lift her husband up and at that time the accused beat her with the iron rod. When her husband got up the accused stabbed him on his chest. When the deceased tried to move back, the accused stabbed him against several times and the deceased fell down at the foot of a coconut tree. PW1's wife who arrived at the scene bandaged the wound and took the deceased to the car porch. After some time PW1 arrived and took the deceased in a car to the Mandiram Hospital from where he was taken to the Medical College

Hospital, Kottayam. At about 8 pm her husband succumbed to the injuries. PW5, the father of the accused and PW6 wife of the accused who were allegedly present there became hostile. According to PW5, when he along with his wife came to the scene of occurrence, the deceased was beating the accused with an iron rod. He also stated that his father assaulted his wife with a spade and he asked the accused to run away from the scene. Then the accused went to their property through the eastern side of the compound wall, but the deceased followed him with the iron rod and entered their property. PW6, wife of PW5 also similarly stated. PW6 was an injured witness. Exhibit P11 is the wound certificate. But if the evidence of PW2 is believed, no injury was caused to PW6. Exhibit P10 is the wound certificate of the accused. The injuries noted in Exhibit P10 are the following:

- “1) An incised wound in the scalp on the left side 3 cm x 1 cm x ½ cm.
2. Abrasion on the fingers of the right palm.
3. Linear abrasion on the right forearm.
4. Linear abrasion on the back of the left side of chest.”

3. According to PW2, when the accused beat the deceased with the iron rod he tried to ward off the attack and in that process

the iron rod hit the head of the accused. The location and the nature of the injuries noted in Exhibit P10 would improbabilise the version of PW2 in this regard. Even according to PW2, when she heard the sound and looked, her father-in-law was questioning the accused. According to her, it is the accused who first fell down due to injury.

4. Exhibit P14 is the postmortem certificate issued by PW15. The postmortem certificate shows that stomach was full with soft rice and other unidentifiable food particles with a smell similar to that of alcohol. Cause of death was due to penetrating injury on the chest. Exhibit P12 is the wound certificate of the deceased. They are caused because of the injury "-----" (beaten with iron rod). Considering the totality of evidence, the trial Judge came to the conclusion that PW2 the only alleged eye witness was not a wholly reliable witness and her evidence is not reliable and the prosecution was not narrating a correct story that the genesis of the offence is not proved and the totality of the evidence etc. shows that prosecution was not able to prove the case against the accused beyond reasonable doubt. Two eye witnesses examined by prosecution supported the defence story and the trial Judge came to the right opinion that defence version is more probable. We are of the opinion that the trial court has given sufficient reasons for the

acquittal. In a revision petition interference can be made in the order of acquittal only on limited points. There is no perverse finding or patent illegality. The State did not file any appeal against the order of acquittal. We find no reason to interfere with the order of acquittal in the revisional jurisdiction. The Revision petition is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

Cr1.R.P.NO.559 OF 1999

O R D E R

24.10.2007